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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARGARITA JULIA CABANILLAS,

Defendant and Appellant.

2d Crim. No. B209128  
(Super. Ct. No. 1238798)  
(Santa Barbara County)

Margarita Julia Cabanillas appeals a judgment following her no contest plea to possession for sale of methamphetamine. (Health & Saf. Code, § 11378.) We conclude that the judgment must be vacated because the trial court did not comply with the procedure required by *People v. Holmes* (2004) 32 Cal.4th 432, as it accepted her conditional plea of no contest without making an inquiry into the factual basis for the plea. We reverse and remand with instructions.

FACTS

On May 18, 2007, the District Attorney filed a felony complaint alleging that 1) Cabanillas possessed heroin, a controlled substance (count 1), 2) she possessed methamphetamine for sale (count 2), and 3) she was in possession of drug paraphernalia (count 3).

On February 21, 2008, Cabanillas entered into a written plea agreement where she agreed to plead guilty or no contest to count 2 and stated that she was "entering [her] plea based on a promise or representation made by the District Attorney" that she would receive a three-year prison term. At the hearing, the trial court said, "I accept her no contest plea to Count 2. On that basis, do you wish to dismiss the balance of the Complaint as it applies to Margarita Cabanillas only?" The prosecutor: "Yes." The court then scheduled a sentencing hearing. The court made no inquiry from either Cabanillas or her counsel about whether there was a factual basis for her plea.

Cabanillas appeared for her sentencing hearing on April 24, 2008, before a different judge. The court said, "I am going to sentence pursuant to the plea agreement. [¶] Anything further from the People?" The prosecutor: "No." The court: "Anything further, Mr. Carty [defense counsel]?" Carty: "No, Your Honor, except I do have the credits when you're ready for them."

The sentencing judge made no inquiry about whether there was a factual basis for the plea. The court imposed sentence on April 24, 2008. There was no probation report in the record. The probation report was prepared on May 23, 2008, and filed with the court five days later.

## DISCUSSION

### *Inquiry into the Factual Basis for the Plea*

Cabanillas contends that the judgment must be reversed because the trial court made no inquiry into the factual basis for her conditional plea. The Attorney General agrees. They are correct.

A conditional plea is one where "the plea is conditioned upon receipt of a particular disposition." (*People v. Holmes, supra*, 32 Cal.4th at p. 435.) Here Cabanillas entered a conditional plea. She pled no contest to a single count in exchange for the dismissal of the remaining counts and an agreement with the prosecutor that she would receive a three-year prison term.

But "in order for a court to accept a conditional plea, it must garner information regarding the factual basis for the plea from either the defendant or defense counsel . . . ." (*People v. Holmes, supra*, 32 Cal.4th at p. 436.) If this information is obtained from the defendant, "the court may develop the factual basis for the plea . . . by having the defendant describe the conduct that gave rise to the charge [citation], or question the defendant regarding the factual basis described in the complaint . . . ." (*Ibid.*) If the court elects to obtain the factual basis from defense counsel, it should have counsel "stipulate to a particular document that provides an adequate factual basis . . . ." (*Ibid.*) "Under either approach, a bare statement by the judge that a factual basis exists, without the above inquiry, is inadequate." (*Ibid.*)

Here the trial court made no inquiry from Cabanillas or defense counsel on the factual basis for this plea. It simply accepted the plea and set the matter for a sentencing hearing. The court did not comply with the procedure required to accept a conditional plea.

This error does not require a reversal if there were facts in the record from sufficient documents, such as preliminary hearing transcripts or probation reports, from which the court could reasonably infer that the admission of guilt had adequate factual support. (*People v. Willard* (2007) 154 Cal.App.4th 1329, 1334-1335.) But that is not the case here. The Attorney General states, "Because the plea was taken before a preliminary hearing was held, there is no witness testimony to demonstrate a factual basis for appellant's plea." A probation report may contain facts to support a trial court's finding that there is a factual basis for a plea. (*Ibid.*) But the Attorney General concedes that the sentencing judge "never indicated that he had read and considered the probation report." There is a good reason for this. The probation report was not prepared or filed with the court until several weeks after the sentencing hearing. The parties are correct that there is nothing in this record to indicate that either the judge who accepted the plea or the sentencing judge ever made inquiries about the factual basis for this plea or had

documentary support for Cabanillas's admission of guilt. This error is not harmless.  
(*Ibid.*)

The judgment is reversed and the matter is remanded to the trial court with instructions to follow the remand procedure described in *People v. Willard, supra*, 154 Cal.App.4th at pages 1335-1336.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

Harry J. Loberg, Joseph Lodge, Judges  
Superior Court County of Santa Barbara

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Greg May, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, James William Bilderback II, Supervising Deputy Attorney General, Taylor Nguyen, Deputy Attorney General, for Plaintiff and Respondent.